

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA**

VFS LEASING CO.,)	
)	
PLAINTIFF,)	
)	CIVIL ACTION NO.: 3:06CV638-SRW
VS.)	
)	
G. F. KELLY, INC d/b/a KELLY)	
TRUCKING; and GUY KELLY,)	
)	
DEFENDANTS.)	

MOTION TO STRIKE DECLARATIONS

Come now the Defendants G. F. Kelly, Inc. d/b/a Kelly Trucking and Guy Kelly and move the court to strike the Declarations of Michael J. Cox and Keith Weachter filed by plaintiff with its Evidentiary Submission in Support of Defendant's Motion for Summary Judgment and in support of its Motion to Strike filed on April 30, 2007. As grounds for this motion, Defendants show the following:

1. The declarations contain expert testimony and opinions. Neither Cox nor Weachter were identified as experts by the deadline of January 29, 2007 as set out in the Uniform Scheduling Order issued by the Court. The only expert timely identified by plaintiff is Kevin Miller. It would greatly prejudice the defendants if plaintiff is allowed to use additional experts that were not timely identified.

2. The declarations contain testimony that comments on testimony and qualifications of other witnesses. Such testimony is inadmissible and should be stricken.

Respectfully Submitted,

/s/ James H. Starnes

James H. Starnes

Attorney for Defendants

OF COUNSEL:

P. O. Box 590003

Birmingham, AL 35259-0003

(205) 320-0800

CERTIFICATE OF SERVICE

I hereby certify that I have the foregoing pleading electronically using the CM/ECF system which will electronically serve a copy of same on all counsel of record on this the 2nd day of May, 2007 as follows:

David B. Hall
BAKER DONALDSON
420 North 20th Street, Suite 1600
Birmingham, AL 35203

/s/ James H. Starnes

OF COUNSEL